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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2676 OF 2007

M/s.Bharat Insulation Corporation (India) Limited — Petitioner

versus

Municipal Corpn. of Greater Mumbai and another — Respondents

Mr.E.P.Bharucha, Sr.Counsel with Kamal Khata i/by N.R.Gandhi & Abhay Tikekar for petitioner.

Ms.Archana Joshi for respondent.

CORAM : A.M.KHANWILKAR, J.

DATE : 18th December 2007

PC :

1. This writ petition takes exception to the communication dated 28th November 2007 issued under the signature of the Executive engineer of the Corporation (Exhibit-L). Counsel for the petitioner, however, submits that it is a stop work order passed by the Executive Engineer. Although the document does not specifically refer to the provisions of law, however, it is couched in such a manner that it is a stop work order issued by the authorised officer in exercise of powers under section 454A of the Act.

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2. Be that as it may, from the nature of controversy brought before this Court, instead of examining all aspects of the matter raised by the petitioner for the first time in this proceeding, the appropriate course to my mind is, to relegate the petitioner before the Executive Engineer. The petitioner shall submit all necessary documents on which the petitioner would choose to rely in support of the claim that the petitioner is the owner of the disputed property. That shall be done within one week from today. The petitioners through counsel undertakes to do so. The Executive Engineer on receipt of said documents/materials, may give due opportunity to the third party at whose instance the impugned communication has been sent to the petitioner and after considering objections, if any, may proceed to take appropriate decision within one week thereafter. Till such time, however, the respondents shall not precipitate the matter or act upon the communication dated 28th November 2007. I am inclined to issue such directions as it is seen from the record that the Authorised Officer of the Corporation on scrutiny of documents chose to issue IOD in favour of the petitioner on the basis of which the petitioner

commenced the development work on the disputed property. The fact that the IOD was already issued in favour of the petitioner, presupposes that the concerned officials of the Corporation were convinced about the title of the petitioner in relation to the disputed property in question. In such a case, it will be inappropriate to ask the party to stop work unless the Corporation was "fully satisfied" that the said party had persuaded the officials to issue IOD on the earlier occasion by misrepresentation or fraud and that too when in fact the petitioner had no title to the disputed property. All such matters will have to be considered carefully by the Executive Engineer before appropriate decision is taken. As aforesaid, till such final decision is taken, the petitioner will be free to continue with the development work on the disputed property at his risk and subject to such restrictions as may be applicable and consistent with the orders passed by any Court of competent jurisdiction.

3. It is once again made clear that the development activity continued by the petitioner on the disputed property in terms of this order, will be entirely at the risk, costs and

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consequences of the petitioner and the petitioner will not be free to claim equity at a later point of time. In other words, the petitioner will abide by the final order passed by the Executive Engineer upon inspection of the title of the petitioner. Indeed, that will be subject to such other remedy available to the petitioner which may be permissible by law. Petition disposed off in the above terms.

(A.M.KHANWILKAR, J.)